MISC. CRIMINAL APPLICATION NO. 4535 OF 1994.

Date of decision: 3.4.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. S.R. Divetia, A.P.P., for applicant-State.
Mr. P.N. Bavishi, advocate for respondent.

1. Whether Reporters of Local Papers may be allowed to see the judgment? -YES

2. To be referred to the Reporter or not?- YES

3. Whether their Lordships wish to see the fair copy of judgment? -NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? -NO

5. Whether it is to be circulated to the Civil Judge? -NO

Coram: R. R. Jain, J.

April 3, 1996.

Oral judgment:
1. Aggrieved by the order dated 22.8.1994 passed by the learned Chief Judicial Magistrate, Jamnagar releasing the respondent/accused on bail in C.R.No.56 of 1994 for the offence under Sections 323, 504 and 506 (2) of Indian Penal Code read with Section 3 (10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("the Act" or "Atrocity Act" for short hereinafter), State of Gujarat has preferred this petition under Section 439 (2) of the Criminal Procedure Code ("Code" for short hereinafter) for cancellation of bail.

2. It is argued on behalf of the State that

alongwith offences under Indian Penal Code the respondent was also charged for offence under Section 3 (10) of the Act and by virtue of Section 14 of the Act, the offences under the said Act is exclusively triable by Special Court in the cadre of Session Court hence, the Magistrate having no jurisdiction ought not to have entertained the bail application. It is not in dispute that alongwith the offences under the said Act the respondent is also charged for commission of offence under Sections 323, 504 and 506 (2) of the Indian Penal Code. It is needless to say that the offences under the IPC for which the respondent is charged are triable by a court of Magistrate and, therefore, any Magistrate would have power to entertain bail application under Section 437 of the Code. Therefore, the mute question arising for consideration of this court is in a case where the accused is also charged for commission of offence under any of the provisions of the Act, is the Court of Magistrate empowered to entertain bail application and pass appropriate orders? Mr. Divetia, learned A.P.P., has relied upon provisions of Sections 14, 15 and 20 of the Act. For the sake of convenience, the aforesaid sections are reproduced hereunder. Section 14 of the Act reads as under:

> "14. Special Court.-- For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act."

Section 15 deals with appointment of Special Public Prosecutor and reads as under:

> "15. Special Public Prosecutor.-- For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court."

Similarly, Section 20 of the Act pertains to overriding effect upon other laws. Section 20 is reproduced as under:

> "20. Act to override other laws.-- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent herewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law."

Thus, it is argued on behalf of the State that by virtue of appointment of Special Court, which is none else but a Court of Session, any matter under the Act shall be exclusively tried by a Court of Session. Alongwith appointment of Special Courts, Special Public Prosecutors are also appointed by State Government for representing the case before the Special Court and, therefore, if at all the pretrial proceedings are to be entertained by any court of Magistrate, the Public Prosecutor representing the State would not be one empowered as per Section 15 of the Act.

3. Mr. Bavishi, learned advocate for the respondent, has drawn my attention of this Court to Section 4 of the Code which reads as under:

"Trial of offences under the Indian Penal Code and other laws.

4. (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

According to Section 4 of the Code, all the offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code. Sub-Section (2) of Section 4 says that so far as any offence under any other law is concerned, the same shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Meaning thereby, offence under any other enactment shall be dealt with by the procedure laid down therein and in absence thereof has to be dealt with in accordance with procedure laid down in the Code. My view is fortified by the judgment of Supreme Court in the case of Directorate of Enforcement v. Deepak Mahajan, AIR 1994 SC 1775.

4. As discussed above, Section 14 of the Act empowers the State Government to notify Special Court for the purpose of speedy trial. The object of specifying Special Court is to see that the trial in case of

offences under the Act is not delayed on account of other cases. Similarly, to ensure speedy trial and justice, Section 15 also provides for appointment of Special Public Prosecutors. The object being that Special Public Prosecutor appointed under Section 15 of the Act would only be burdened to proceed with the cases under the Act and, thereby ensuring speedy trial. Except both these sections, I do not find any other express provision which lays down any procedure either for trial or investigation, inquiry, trial or any question to be dealt with otherwise. On the contrary, Section 18 of the Act creates a bar for entertaining application for anticipatory bail as provided under Section 438 of the Code. Similarly, by virtue of Section 19 of the Act, provisions of Section 360 of the Code in relation to provisions of Probation of Offenders Act are also taken out of the purview of the Special Court in a trial under the Act. In other words, looking to the nature of gravity of offence, the legislature thought it fit to exclude operation and implementation of some of the provisions of the Code. Thus, by virtue of Section 20, that is, overriding effect of this Act and Section 4 (2) of the Code except as provided under Sections 18 and 19 of the Act, rest of the provisions of Code will apply in its letter and spirit. Therefore, except Section 438 of the Code the provisions of Chapter XXXIII of the Code in relation to provisions as to bail bond shall apply as there is no inconsistent provision contained in this Act.

5. At this juncture, Mr. Divetia, learned A.P.P., has argued that by virtue of Section 14 of the Act, Special Courts are empowered to hold trial and as trial shall deem to include pre-trial proceedings an application for bail also should to entertain by the same Court. To appreciate this contention, reference is required to be made to Section 190 of the Code which deals with taking cognizance of any matter. In my view, taking cognizance is a condition precedent for trial as unless any court takes cognizance of any case trial cannot commence. As provided in Section 190 of the Code, court can take cognizance only upon receiving any complaint of facts which constitutes an offence or upon a police report or upon information received from any person other than a police officer or upon its own knowledge that such offence has been committed. Any application for bail is not a part of regular trial but is considered to be pre-trial proceeding. If the court has not taken cognizance as provided under Section 190 of the Code, the concept of trial, as referred to in Section 14, shall not be deemed to have commenced.

6. In absence of any express provision the Court cannot sit tight lips but can interpret the statute keeping in mind scheme, object, intention and provisions of other statutes. It is true that Court cannot legislate and interpret in such a way so as to add which was not intended but at the same time can interpret to achieve intention. At this junction, a bare look at some of the provisions of other Special Act will make the intention very clear paving way for appropriate interpretation. Section 12-AA (d) of the Essential Commodities Act, 1955 reads as under:

"(d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a Special Court or the High Court:

Provided that a Special Court shall not release any such person on bail--

(i) without giving the prosecution an opportunity to oppose the application for such release unless the Special Court, for reasons to be recorded in writing, is of opinion that it is not practicable to give such opportunity; and

(ii) where the prosecution opposes the application, if the Special Court is satisfied that there appear reasonable grounds for believing that he has been guilty of the offence concerned:

Provided further that the Special Court may direct that any such person may be released on bail if he is under the age of sixteen years or is a woman or is a sick or infirm person, or if the Special Court is satisfied that it is just and proper so to do for any other special reason to be recorded in writing".

Similar provision is also made in the Terrorist and Disruptive Activities (Prevention) Act, 1987. Sub-section (8) of Section 20 reads as under:

"(8) Notwithstanding anything contained in the Code no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless-

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for

believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

My attention is also drawn to Section 36-C read with Section 37 (1) (b) (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 36-C reads as under:

"36-C. Application of Code to proceedings before a Special Court.-- Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor."

Section 37 (1) (b) (ii) reads as under:

"(ii) where the Public Prosecutor oppose the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

Thus, in all the aforesaid enactments, the offences are either triable by Session Court or Special Court and even for the purpose of entertaining bail applications, the legislature thought it fit to empower special/designated courts excluding jurisdiction of ordinary criminal courts under the Code.

7. Thus it becomes manifestly evident that wherever the Thus it becomes manifestly evident that wherever the legislature thought it fit has made special provisions even in relation to bail applications in a case triable by either Special or Designated Court. By making special provisions, one can infer intention of legislature to exclude jurisdiction of ordinary criminal courts. However, in Atrocity Act though it provides for establishment of Special Courts and Special Prosecutors, no express provision is made with regard to pre-trial proceedings, i.e., bail applications under Chapter XXXIII of the Code. Therefore, keeping in mind the intention of legislature the Court can look into and even some times may go behind words and enactments to give effect to the legislative intention. Ordinarily, the courts should be slow to pronounce the legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the

enactment as affording the best guide, but to winch up the legislative intent, it is permissible for Courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. In this case, the question is whether is it the intention of the legislature to exclude jurisdiction of ordinary criminal courts even at pre-trial stage as the legislature did not make special provision. In my view, in absence of express provisions the legislature intent can be inferred to vest powers with ordinary criminal courts and provisions of the Code shall apply regarding the manner of investigation, inquiring into, trying or otherwise dealing with such offences as provided under Section 4 (2) of the Code, therefore, one can safely infer, believe and hold that despite making provisions for Special Courts, only for the purpose of speedy trial (emphasis supplied) rest of the provisions of the Code shall apply and ordinary criminal Courts can exercise powers vested under Section 437 of the Code in relation to offences under the Act. On this point, I am fortified by similar view (unreported) taken by this court (Coram: B.C. Patel, J.) in Misc. Criminal Application No. 596 of 1994 decided on 3.3.1994.

8. In light of foregoing discussion, if a bail application can be entertained by ordinary criminal court then in present case I do not find any illegality or irregularity in exercise of powers by the learned Judicial Magistrate, First Class, Jamnagar. The exercise of powers under Section 437 of the Code are quite in consonance with the scheme of the Act and, therefore, does not call for any interference. Apart from this fact, the learned A.P.P. has not been able to show from the record that in the given set of circumstances, the court below ought not to have released the accused on merits or that the court below has erroneously appreciated the material placed while exercising jurisdiction and has resulted in carriage of gross injustice. Hence the application for cancellation of bail is devoid of merits and deserves to be rejected. The application is rejected. Rule is discharged.

Coram: R.R.Jain, J.

September 12, 1996.

Further order under Section 362 of Cr.P.C.

On being published in Law Reports, my attention is drawn to a typographical error in 16th line of paragraph 2 above in connection with word 'Mute". The same is corrected and word "mute" is substituted by word "moot" and be read accordingly.

12.9.1996. (R.R.Jain, J.)